

REMARKS

Claims 10, 16, 18 and 22 are pending. Claims 1-9, 11-15, 19-21 and 23-29 have been canceled without prejudice to filing the subject matter of these claims in a Continuation or Divisional Application.

Claim 10 has been amended to further define the invention. These amendments are supported by the original disclosure and the genus (as amended) includes compounds of tables A1, A2, A3 and A4 of the present specification.

No new matter has been added by way of the above-amendment.

[I] Interview

Applicants note with appreciation that the Examiner conducted an Interview with Applicants' representative, Garth M. Dahlen, Ph.D., Esq. (#43,575) on March 4, 2008. The Examiner was helpful in clarifying the issues. It is noted that the Examiner looked upon Applicants' arguments and amendments with favor, although the Examiner was not willing to formally withdraw the rejections at the time of the Interview.

[II] Obviousness-type Double Patenting: US 6,884,759

The inventive claims are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 5 and 6 of US 6,884,759 ("the '759 patent"). Applicants respectfully traverse the rejection.

MPEP 804 gives the following guidance in the obviousness-type double patenting analysis:

Any obviousness-type double patenting rejection should make clear:

(A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent.

When considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art.

Applicants now discuss the rejection using the guidance of MPEP 804 cited above.

As the Examiner will note above, inventive claim 10 has been amended to exclude compounds of formula (II) wherein X^1 is hydrogen and n is 1-30. In other words, formula (II) no longer encompasses compounds wherein X^1 is hydrogen and n is 1-30.

This amendment has been made since the Examiner has equated the plant activating compounds of formula (II) with the surfactant claimed in the '759 patent. It is respectfully submitted that **the remaining compounds of formula (II) do not have surface-activity** and would not be considered by the artisan as being a surfactant.

The differences between claims 2 and 6 of the '759 patent and present claim 10 are shown in the following tables:

An embodiment of Claim 2 of the '759 patent	Present claim 10
A plant-activating agent composition comprising	A plant-activating composition comprising
(A) a C ₁₂₋₁₉ mono-alcohol	[Not recited]
(B) a C ₂₀₋₃₀ mono-alcohol, and	[Not recited]
(C) at least one selected from the group consisting of a surfactant,	[Not recited]
[Not recited]	<p>a plant-activating agent which is a compound of formula (II),</p> $\text{RCOO(AO)}_n\text{X}^1 \quad (\text{II})$ <p>wherein R represents an alkyl or alkenyl group having 11 to 29 carbon atoms; X¹ represents a hydrogen atom, an alkyl or acyl group having 1 to 30 carbon atoms or an alkenyl group having 2 to 30 carbon atoms; AO represents at least one group selected from oxyethylene, oxypropylene and oxybutylene groups and may be random or block; n represents an average number of moles added and is zero to 30;</p> <p><u>wherein when n is zero in formula (II), X¹ is a hydrogen atom, an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms, and</u></p> <p><u>wherein when n is 1 to 30 in formula (II), X¹ is an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms</u></p>
[Not recited]	wherein the plant-activating agent is in an aqueous solution or aqueous dispersion and is in a concentration of 0.01 to 500 ppm;
a fertilizer component	a fertilizer component.

An embodiment of Claim 6 of the '759 patent	Present claim 10
A plant-activating agent composition comprising	A plant-activating composition comprising
particles having an average particle diameter of 0.01 to 500 μm	[Not recited]
(A) a C_{12-19} mono-alcohol, and	[Not recited]
(B) a C_{20-30} mono-alcohol	[Not recited]
surfactant	[Not recited]
[Not recited]	<p>a plant-activating agent which is a compound of formula (II),</p> $\text{RCOO}(\text{AO})_n\text{X}^1 \quad (\text{II})$ <p>wherein R represents an alkyl or alkenyl group having 11 to 29 carbon atoms; X^1 represents a hydrogen atom, an alkyl or acyl group having 1 to 30 carbon atoms or an alkenyl group having 2 to 30 carbon atoms; AO represents at least one group selected from oxyethylene, oxypropylene and oxybutylene groups and may be random or block; n represents an average number of moles added and is zero to 30;</p> <p><u>wherein when n is zero in formula (II), X^1 is a hydrogen atom, an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms, and</u></p> <p><u>wherein when n is 1 to 30 in formula (II), X^1 is an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms</u></p>
[Not recited]	wherein the plant-activating agent is in an aqueous solution or aqueous dispersion and is in a concentration of 0.01 to 500 ppm.
a fertilizer component	a fertilizer component.

Applicants now discuss whether the invention defined in present claim 10 would have been an obvious variation of the invention defined in claims 2 and 6 of the '759 patent. With respect to claim 2 and 6 of the '759 patent, claims 2 and 6 do not recite the compounds of Formula (II). As recited above, the compounds of Formula (II) are not surfactants. In view of the fact that the Examiner has not cited a secondary reference which makes this limitation obvious,

present claim 10 is not obvious. As such, withdrawal of the rejection over the '759 patent is respectfully requested.

III Obviousness-type Double Patenting: US 6,489,269

The inventive claims are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of US 6,489,269 ("the '269 patent"). Applicants respectfully traverse the rejection.

As the Examiner will note above, inventive claim 10 has been amended to exclude compounds of formula (II) wherein X^1 is hydrogen and n is 1-30. As noted in Section [II] above, the remaining compounds of formula (II) do not have surface-activity and would not be considered by the artisan as being a surfactant.

The Examiner cites claims 1-30 of the '269 patent. Of claims 1-30, only claims 5, 8, 10, 20, 23 and 25 are independent composition claims.

Claim 5 of the '269 patent is now used as a representative claim to compare to present claim 10. The differences between claim 5 of the '269 patent and present claim 10 are shown in the following table:

An embodiment of Claim 5 of the '269 patent	Present claim 10
A composition for promoting plant growth consisting essentially of	A plant-activating composition comprising
a C ₁₂₋₂₄ mono-alcohol	[Not recited]
(iii)a surfactant,	[Not recited]
[Not recited]	<p>a plant-activating agent which is a compound of formula (II),</p> $\text{RCOO}(\text{AO})_n\text{X}^1 \quad (\text{II})$ <p>wherein R represents an alkyl or alkenyl group having 11 to 29 carbon atoms; X¹ represents a hydrogen atom, an alkyl or acyl group having 1 to 30 carbon atoms or an alkenyl group having 2 to 30 carbon atoms; AO represents at least one group selected from oxyethylene, oxypropylene and oxybutylene groups and may be random or block; n represents an average number of moles added and is zero to 30;</p> <p><u>wherein when n is zero in formula (II), X¹ is a hydrogen atom, an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms, and</u></p> <p><u>wherein when n is 1 to 30 in formula (II), X¹ is an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms</u></p>
[Not recited]	wherein the plant-activating agent is in an aqueous solution or aqueous dispersion and is in a concentration of 0.01 to 500 ppm.
a fertilizer component and	a fertilizer component,
and a chelating agent.	[Not recited]

Applicants now discuss whether the invention defined in present claim 10 would have been an obvious variation of the invention defined in claim 5 of the '269 patent. With respect to claim 5 of the '269 patent, claim 5 does not recite the compounds of Formula (II). As recited above, the compounds of Formula (II) are not surfactants. In view of the fact that the Examiner has not cited a secondary reference which makes this limitation obvious, present claim 10 is not obvious.

Similar distinctions exist between the present claims and claims 8, 10, 20, 23 and 25 of the '269 patent.

As such, withdrawal of the rejection over the '269 patent is respectfully requested.

Conclusion

In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


Application No. 09/842,896
Amendment dated March 13, 2008
After Office Action dated December 13, 2007

Docket No.: 0425-0836P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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